

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

VICINITY ENERGY BALTIMORE HEATING LLP
AND VICINITY ENERGY BALTIMORE COOLING
LLP, A SINGLE EMPLOYER,

Employer

and

Case 05-RC-260109

PLUMBERS AND STEAMFITTERS LOCAL 486
AFFILIATED WITH UNITED ASSOCIATION OF
JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF
THE U.S. AND CANADA,

Petitioner

DECISION AND DIRECTION OF ELECTION

Vicinity Energy Baltimore Heating LLP and Vicinity Energy Baltimore Cooling LLP (“the Employer”) is engaged in business as a full-service energy provider specializing in the sale of heating and cooling, respectively, and services to commercial customers. Plumbers and Steamfitters Local 486 affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada (“the Petitioner”) seeks to represent a bargaining unit of all full-time and regular part-time mechanics, meter technicians, plant operators, stationary engineers, distribution mechanics, electricians, operations team leads, IM and E specialists, IM and E leads, OAM technician III leads, planners and general maintenance workers employed by the Employer at or out of the facilities currently located at 1400 Ridgely Street, 6 S. Frederick Street, 1500 Leadenhall Street, 201 North Central Avenue, 1 West Pratt Street, 785 Constitution Street, 300 West Preston Street, 641 West Saratoga Street, 1001 Fleet Street, 331 W. Saratoga Street, and 2800 Sethlow Road, Baltimore, Maryland respectively, but excluding all other employees, professional employees, temporary employees, office clerical employees, guards, and supervisors as defined in the Act.¹ A hearing was held on May 19, 2020² before a hearing officer of the National Labor Relations Board (the Board).³

¹ The parties stipulate, and I find that this bargaining unit is appropriate.

² All dates herein are in 2020, unless specified otherwise.

³ The petition in this case was filed under Section 9(c) of the National Labor Relations Act, as amended (the Act). Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated the undersigned its authority in this proceeding. Upon the entire record in this proceeding, I find:

1. The hearing officer’s rulings, made at the hearing, are free from prejudicial error and are hereby affirmed.
2. The parties stipulated, and I find, that Vicinity Energy Baltimore Heating LLP, a limited liability partnership, with an office and place of business in Baltimore, Maryland, is engaged as a full-service energy provider specializing in the sale of heating and services to commercial customers, from its Baltimore, Maryland facilities, the only facilities involved herein. In conducting its operations during the 12-month period ending

I. Issues and Positions of the Parties:

The only matter in contention raised during the hearing was whether to conduct the election manually or by mail ballot. The parties were advised that the determination over the method of election was not to be litigated. The determination over the method of election rests within the discretion of the Regional Director, and therefore, it was not an issue subject to litigation during the hearing. NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11228 and Section 11301.2.

Notwithstanding, the parties were afforded an opportunity to present their positions regarding the method of the election, including the feasibility of conducting a manual election in light of the spread of coronavirus and COVID-19. The parties are not in agreement with the method of election. The Petitioner's position is that, because of the pandemic, currently it is not safe to conduct in-person manual elections. The Petitioner posits that the Board has, for nearly the entire duration of the Act, allowed employees to vote by mail ballot in appropriate circumstances. Referencing the extraordinary circumstances presented by the pandemic, the Petitioner provided statistics on the number of COVID-19 cases, and related deaths, in the United States, the State of Maryland, and the City of Baltimore. For the City of Baltimore, I take administrative notice that

April 30, 2020, Vicinity Energy Baltimore Heating LLP derived gross revenues in excess of \$250,000, and purchased and received goods or services valued in excess of \$5,000 which originated from points located outside the State of Maryland. The parties also stipulated, and I find, that Vicinity Energy Baltimore Cooling LLP, a limited liability partnership, with an office and place of business in Baltimore, Maryland, is engaged as a full-service energy provider specializing in the sale of cooling and services to commercial customers, from its Baltimore, Maryland facilities, the only facilities involved herein. In conducting its operations during the 12-month period ending April 30, 2020, Vicinity Energy Baltimore Cooling LLP derived gross revenues in excess of \$250,000, and purchased and received goods or services valued in excess of \$5,000 which originated from points located outside the State of Maryland. Furthermore, the parties stipulated, and I find, that at all material times, Vicinity Energy Baltimore Heating LLP and Vicinity Energy Baltimore Cooling LLP have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common sales and purchasing; and have held themselves out to the public as a single-integrated business enterprise. Based on the foregoing, the parties stipulated, and I find, that Vicinity Energy Baltimore Heating LLP and Vicinity Energy Baltimore Cooling LLP constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

3. I further find, as also stipulated by the parties, that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.
4. The parties stipulated, and I also find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.
5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

there were 6,038 confirmed cases of COVID-19, and 264 confirmed deaths, as of the date of this Decision. See <https://coronavirus.baltimorecity.gov/> (last visited June 7, 2020). The Petitioner stresses that the coronavirus is thought to spread mainly from person to person through respiratory droplets, and that the coronavirus has been detected in individuals who are asymptomatic—those not showing symptoms of infection. The Petitioner contends that a manual election involves a significant amount of social contact, exactly the type of which is to be avoided in this pandemic. The Petitioner argues the present case is not unlike *Atlas Pacific Engineering Co.*, Case 27-RC-258742, in which the Regional Director directed a mail ballot election despite the Employer agreeing to provide a lengthy, detailed plan for ensuring social distancing and a disinfected polling place. The Board determined that the direction of a mail ballot was not an abuse of discretion, and denied a request for review. *Id.* (unpublished Order issued May 8, 2020).

The Employer, on the other hand, argues that a mail ballot is not appropriate because petitioned-for unit employees are not scattered in a wide geographic area, there are no significant variations among their shifts and/or starting times, and there is no strike, lockout, or picketing in progress. In this regard, the Employer's position is that the Board, in *San Diego Gas & Electric*, 325 NLRB 1143 (1998), laid out limited exceptions to when an election should be conducted by mail, and that none of those factors are present. Thus, the Employer contends that the election should be conducted by the Board's longstanding preferred method of manual election. The Employer proposes a one-day manual ballot for two separate two-hour periods (5:30 a.m. to 7:30 a.m.; 2:00 p.m. to 4:00 p.m.) to be held in the Training Room at the Employer's Ridgley facility and the Machine Shop Bay at the Employer's Leadenhall facility, each in Baltimore.⁴ Furthermore, the Employer states that a manual election should be scheduled for either Thursday, Wednesday, or Tuesday (in order of the Employer's preference); the Employer states that employees are often required to adjust work on Mondays to address maintenance issue that developed over the preceding weekend, and that approximately half the bargaining unit employees are not scheduled to work every other Friday. The Employer agreed to provide a number of different safety-related items, such as:

- (a) provide three separate tables and chairs that will be placed more than 6 feet apart in the voting areas: (1) one for the Board agent; (2) one for the Employer's Election Observer; and (3) one for the Petitioner's Election Observer.
- (b) provide a separate table in each voting area with a spread of approximately 75 individual, disposable pens or pencils;
- (c) place markings on the ground throughout the voting areas, and in the immediate vicinity outside of those areas, to ensure proper social distancing for voters and to ensure that the voting lines within the areas do not exceed 10 voters at a time;

⁴ The Employer proposed either holding the petition in abeyance, or ordering a mixed mail/manual election, in the event that I did not direct a manual election.

- (d) ensure that the voting areas have sufficient room for voters to maintain 6 feet of space between one another when entering and existing the voting areas;
- (e) provide masks and gloves for the Petitioner's personnel, Election Observers, and employees who approach the table to vote;
- (f) provide hand sanitizers and/or wipes; and
- (g) immediately notify the Regional Director if any individual employed at the Baltimore facilities, regardless of position, title, or employer, tests positive for COVID-19.

The Employer claims that an election by mail ballot is inherently inferior to a manual election, because of problems with mail delivery (both to employees, and ballots returned to the Board), accessing Board personnel, duplicate ballots, and the employees' following the instructions for mail ballots. Finally, the Employer claims that a mail ballot would be inappropriate because of the probable inability of the Regional Office to receive and date-stamp ballots, since the Regional personnel have been working from home.

For the reasons set forth below, I find that conducting a mail ballot election is required under the present circumstances.

II. Facts:

At the outset, I stress, and take administrative notice of, the pandemic health situation that exists in the United States, and continues to affect the way that individuals, businesses, organizations, and governments conduct their daily operations. The virus that causes COVID-19 is infecting people and spreading easily from person-to-person. On March 11, the COVID-19 outbreak was characterized as a pandemic by the World Health Organization. This situation continues to present a serious public health risk, and the federal government continues to work closely with state, local, tribal, and territorial partners as well as public health partners, to respond to this situation. The Center for Disease Control (CDC) has also issued guidelines or recommendations to help respond to this emerging public health threat, including avoidance of gatherings of more than ten people, the use of cloth face covering and social distancing, among other recommendations.

The CDC has identified that the virus that causes COVID-19 is thought to spread mainly from person to person, mainly through respiratory droplets produced when an infected person coughs or sneezes. See <https://www.cdc.gov/coronavirus/2019-ncov/faq.html#Coronavirus-Disease-2019-Basics> (last visited June 7, 2020). These droplets can land in the mouths or noses of people who are nearby or possibly be inhaled into the lungs. Spread is more likely when people are in close contact with one another (within about 6 feet). *Id.* Predictably, COVID-19 appears to spread easily and sustainably in the community. *Id.* Relevant to this case, although the virus can survive for a short period on some surfaces, the CDC has taken the position that the virus is unlikely to be spread from domestic mail, products or packaging. *Id.*

On March 5, the Governor for the State of Maryland, Lawrence J. Hogan, Jr., proclaimed a state of emergency and existence of catastrophic health emergency, to control and prevent the spread of COVID-19 within the state. The order was renewed on March 17, April 10, May 6, and June 3. As the COVID-19 crisis continued its escalation in the mid-Atlantic region encompassing Maryland, Virginia, and the District of Columbia, Governor Hogan issued on March 30, 2020, a Stay-at-Home order to protect public health and safety, placing restrictions on business and individuals in the state.⁵ The Employer indicated that the bargaining unit employees have considered essential workers, and have been reporting to work on their regular schedules during the pandemic, reporting to the Employer's facilities.

In addition, on April 10, 2020, Governor Hogan issued an order requiring use of face coverings under certain circumstances and requiring implementation of certain physical distancing measures, recognizing that the current available scientific evidence and best practices support limitations on large gatherings and physical distancing to prevent exposures and transmissions, to protect and save lives, and noting that individuals in the state should refrain from congregating.⁶ On May 13, Governor Hogan issued an order authorizing political subdivisions in Maryland to lift their stay-at-home orders, and issue orders more restrictive than the Governor's Order. That same day, the Mayor for the City of Baltimore, Bernard C. Young, issued an order extending the stay-at-home order for the City of Baltimore until further notice. On May 26, Mayor Young issued an order confirming a State of Emergency due to the pandemic, extending the stay-at-home order, but allowing some relaxation of the measures in place, such as curbside pick-up of goods from retail establishments. Mayor Young's Order prohibited gatherings of more than 10 people. On June 5, Mayor Young announced that the City of Baltimore was entering the first phase of re-opening, effective June 8. Among the easing of restrictions, faith-based organizations of up to 50 people would be permitted to worship in tented outdoor services while wearing face coverings and practicing social distancing, and summer camps will be allowed to reopen, with limited capacity of up to 10 people per room for indoor activities and up to 50 people for outdoor activities. Previously, Governor Hogan had issued an Order on May 27, 2020, prohibiting social, community recreational, leisure, and sporting gatherings and events of more than 10 people.⁷

The petitioned-for unit consists of about 51 employees that work in the City of Baltimore. The Employer works in 11 facilities, 4 of which are operated remotely or at which employees work minimal hours. The Employer's 641 Saratoga facility only operates approximately 100 hours a year; when operating, one engineer works there, and other maintenance employees work a total of 40 hours there a year, cumulatively. The Employer's Fleet facility, 331 Saratoga facility, and Sethlow facility are each operated remotely, each seeing approximately four to eight hours of maintenance employees' work, weekly. According to the Employer, most of the bargaining unit employees work in, or report to, one of the two sites the Employer has proposed be used for a manual election—its Ridgely site (19 employees, on one day

⁵ Order Number 20-03-30-01.

⁶ Order Number 20-04-15-01.

⁷ Order Number 20-05-27-01.

shift), and its Leadenhall site (10 employees, over three shifts). The remaining bargaining unit employees work at sites within three miles of one of the two proposed polling sites (which the Employer states would involve highly reduced traffic, due to the pandemic), and, according to the Employer, go to one of the proposed voting sites—Ridgely—approximately once a week (no particular day of the week) for work-related reasons.⁸ The Employer avers that the two proposed voting sites have ample parking. Furthermore, the Employer asserts its employees' shifts do not vary significantly, but involve common brackets of time.

To prevent the spread of COVID-19, the Employer has put some new practices into place, which includes requiring employees to wear masks and requiring employees to maintain social distance, where possible. The Employer asserts that bargaining unit employees do not work with members of the public, such as in a retail store, and the employees thus have a minimal level of exposure to other people at work. The Employer indicated that it is not aware of any reported positive cases of COVID-19 among its employees, that it follows the CDC guidelines at its facilities.

Although the Employer proposes that social distancing guidelines can be followed during a manual election at its facility, a manual election requires the participation of voters, approximately 51 in this case, observers, party representatives and Board agent(s).⁹ Additionally, a manual election requires that observers share the same voter list to check off the names of arriving voters. Voting employees stand in line, waiting to be checked in. There is inherently a social contact component to the voting employee checking in with the Board agent, and the Board agent handing over a ballot. In a manual election, all voters use the same cardboard voting booth, share the same pencils to mark their ballots, and deposit their ballots in the same cardboard box. Likewise, the Board agent must handle all the paper ballots during the counting that takes place immediately after the close of the polling, and the Board agent and all parties' representatives sign the same Tally of Ballots.

III. Analysis

The Board has held that the mechanics of an election, such as date, time, and place are left to the discretion of the Regional Director. See *Ceva Logistics U.S., Inc.*, 357 NLRB 628 (2011) (finding that the Regional Director acted within his discretion when he directed an election on a day on which employees were scheduled to attend a meeting at the Employer's facility, but were not scheduled to work); *San Diego Gas & Electric*, 325 NLRB 1143, 1144-1146 (1998) (identifying that a Regional Director has broad discretion in determining the arrangements for an

⁸ The remaining facilities, and the number of unit employees who work there, are: Frederick (six employees, over three shifts); Central (five employees, over three shifts); Pratt (zero employees at the time of the hearing); and Preston (four employees, over three shifts).

⁹ In this case, the Employer's proposed manual election would require at least two Board agents, due to the two proposed two polling sites. However, those two agents would have a period of exposure, either at the Employer's facilities or elsewhere, due to the six-plus hour gap between the two polling sessions.

election); *Manchester Knitted Fashions*, 108 NLRB 1366 (1954) (stating that the Regional Director has the discretion to determine the time and place for an election). The Board has specifically found that the Regional Director has the discretion to determine whether an election will be conducted manually or by mail ballot. See *Nouveau Elevator Industries*, 326 NLRB 470, 471 (1998) (stressing that the Regional Director has broad discretion in determining the method by which an election is conducted and that such a decision should not be overturned unless clear abuse of discretion can be demonstrated).

In *San Diego Gas & Electric*, the Board noted that it had invested its Regional Directors with broad discretion to determine the method by which elections are conducted. *San Diego Gas & Electric*, 325 NLRB at 1144. However, the Board recognized that such discretion was not unfettered, and it set forth certain guidelines over that discretion. *Id.* In doing so, the Board stated that its policy was that elections should, generally, be conducted manually, but that there were some instances in which a mail ballot would be appropriate because “of circumstances that would tend to make it difficult for eligible employees to vote in a manual election.” *Id.* In clarifying the guidelines for a Regional Director’s discretion to order a mail ballot election, the Board directed that a Regional Director should consider “at least” where employees are geographically or temporally scattered, or where there is a strike, lockout, or picketing in progress. *Id.* at 1145. In those cases, the Board found that a Regional Director should also consider the positions of the parties, the ability of the unit employees to read and understand a mail ballot, the availability of addresses for employees, and the most efficient use of Board resources. I agree with the Employer that the unit employees are not so scattered in a wide geographic area, or that there are significant variations among their shifts and/or starting times, to demand a mail ballot. There is no contention that there is a strike, lockout, or picketing in progress. Considering the record, this case does not strike me as presenting the factual predicate that would, in normal times, demand that an election be held by mail ballot. However, these are not normal times, but rather extraordinary times.

The Board, in *San Diego Gas & Electric*, recognized that there may be other relevant factors to consider, and that extraordinary circumstances may warrant a departure from the stated guidelines in the exercise of discretion. *Id.* at 1145; see also NLRB Casehandling Manual (Part Two), Representation Proceedings, Section 11301.2. Extraordinary circumstances are those unusual and unforeseen deviations from the range of circumstances already considered. A pandemic of a respiratory disease spreading from person to person poses a serious public health risk that could not have been foreseen by the Board at the time it issued its decision in *San Diego Gas & Electric*. This is exactly the type of extraordinary circumstances in which a Regional Director can exercise his or her discretion to take into consideration other factors. I view the Board’s denial of the request for review in *Atlas Pacific Engineering Co.*, Case 27-RC-258742 (unpublished; May 8, 2020) as a recognition that the present environment suffices as “extraordinary circumstances.” Furthermore, the Board has already identified that the present pandemic presents “compelling circumstances” warranting remote pre-election hearings in representation cases. *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). I likewise construe the denial of the request for review in *Atlas Pacific Engineering* as a recognition that *San Diego Gas & Electric* is not to be read as articulating the exclusive circumstances under which a

Regional Director may direct an election by mail ballot, but allows for discretion in extraordinary circumstances. Accordingly, I am exercising that discretion in this case to direct that the election be conducted by mail ballot.

While the Board has a long tradition, and a strong general preference, of conducting manual elections, it also has a long history of conducting elections by mail. “From the earliest days of the Act, the Board has permitted eligible voters in appropriate circumstances to cast their ballots by mail.” See *London Farm Dairy*, 323 NLRB 1057 (1997) and cases cited therein. The efforts to slow the spread of COVID-19 have been engaged at all levels of society, and that includes the NLRB itself. Thus, I favor any method of election that avoids the risks or minimizes the potential to all parties of getting infected and/or spreading COVID-19. The Employer has, in my opinion, presented a strong argument in favor of a manual election. Its operations have been deemed essential throughout the pandemic, its employees have continued to work, and it has no knowledge of any of its employees testing positive for the coronavirus, and it has not alerted the undersigned to any positive tests since the hearing. The Employer has agreed to safety-related items, such as appropriately-distanced tables, disposable writing instruments, measures to encourage social distancing for employees waiting in line, and certain personal protective equipment and sanitizer. However, I conclude that the safer course of action is to conduct the election by mail ballot.¹⁰

In this instance, the mail election is the preferable method in order to avoid all risks of exposure and transmission present in group gatherings. Although social distancing and the use of cloth face coverings also helps slow the spread of COVID-19, their use does not guarantee the safety of all participants in a manual election. It still presents some risks of exposure to infection through the gathering and close contact between all the election participants and their touching of common items in the voting places, as previously described. While social distancing can be encouraged for voting employees (such as those waiting in line), I am skeptical that those measures can effectively be policed. And while items such as personal protective equipment and hand sanitizer offer measures of protection, they do not, in my opinion, offer the same level of security as a mail ballot. I am likewise concerned about the threat posed by individuals who may be asymptomatic. An election by mail ballot eliminates the social-contact aspect that is inherent in a manual election, and appears to reduce the possibility of exposure through the documents involved in a mail ballot—viewed by the CDC as unlikely to spread the virus.

I reject the Employer’s other arguments against the use of a mail ballot. The Employer cites to highly-generalized issues: problems with mail delivery (both to employees, and ballots returned to the Board); the availability and treatment of duplicate ballots; and the employees’ failure to follow the instructions for mail ballots (as opposed to their ability). I reject the Employer’s arguments as speculative and unfounded. Moreover, the Employer’s arguments seem more posed to the viability of mail ballots generally, as opposed to this specific case—an argument better posed to the National Labor Relations Board itself. Finally, the Employer claims that a mail

¹⁰ There is no contention that the unit employees would not be able to read and understand a mail ballot, or that there are issues with the unit employees’ addresses.

ballot would be inappropriate because of the probable inability of the Regional Office to receive and date-stamp ballots, since the Regional personnel have been working from home, and problems accessing Board personnel. I reject these arguments, and state categorically that the Baltimore Regional Office has received, and date-stamped, mail each day of the pandemic, and its representatives likewise have been, and will remain, available each day by telephone to service employees involved in a mail ballot election.

I am very mindful of the terms and conditions of employment of the NLRB's own employees. At present time, the NLRB is not conducting in-person unfair labor practice hearings. Instead, the NLRB is conducting unfair labor practice hearings through the use of videoconference technology. Likewise, the NLRB is not conducting in-person hearings in representation case hearings. Instead, the NLRB is conducting such hearings via videoconference, absent agreement of all parties or the absence of witness testimony. *Morrison Healthcare*, 369 NLRB No. 76 (May 11, 2020). As of the date of this Decision, the NLRB's field offices remain under mandatory telework. And while that mandatory telework may change in the immediate future, employees are unquestionably subject to mandatory telework on short notice. There is only one reason for these conditions—the pandemic. Each is only possible because of the availability of a viable alternative (videoconference hearings; telephonic hearings; telework). While, in non-pandemic times, I would have no hesitation directing this election to be held manually, there is a viable alternative in these pandemic times of conducting the election by mail ballot.

While the Board has not previously found, under *San Diego Gas & Electric*, that the safety of its own personnel constitutes extraordinary circumstances that would warrant conducting a mail-ballot election outside of the guidelines specified therein, the Board has also not found that a Regional Director is *prohibited* from reaching that conclusion. While I find that the federal, state, and local government directives would not prohibit a manual election for these employees deemed essential, I choose the safer option of a mail ballot. Likewise, while the Baltimore Regional Office may not be operating under mandatory telework at the time of the election (though it is at the time of this Decision), I likewise choose the less-risk averse approach of a mail ballot.

Although this case involves several aspects, such as a large, well-ventilated space and an absence of individuals who have currently tested positive for this transmittable condition, I find that a mail ballot better ensures the safety of all participants—employees, the Employer's representatives, the Petitioner's representatives, and my own employees, who would be conducting the manual election that the Employer prefers. There may have been an absence of affected individuals at the time of the hearing, but that factor is undeniably subject to change by the time a manual election would be held. And, with a wholly viable option in a mail ballot that would not involve the same level of risk of exposure as a manual election, I choose to not put all of these individuals at risk when a viable alternative of a mail ballot exists.

IV. Conclusion:

I conclude that, under the circumstances, a mail ballot election is appropriate, as it will better protect the health and safety of voters, NLRB personnel, and the parties' representatives during the current health crisis.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by Plumbers and Steamfitters Local 486 affiliated with United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the U.S. and Canada.

A. Election Details

The election will be conducted by United States mail. The mail ballots will be mailed to employees employed in the appropriate collective bargaining unit. The Petitioner waived the entirety of its ten-day period with the voter list. Accordingly, on **Friday, June 12, 2020 at 3:00 p.m.**, ballots will be mailed to voters by National Labor Relations Board, Region 05, from its office at 100 S. Charles Street, Bank of America Center, Tower Two, Baltimore, MD 21201. Voters must sign the outside of the envelope in which the ballot is returned. Any ballots received in an envelope that is not signed will be automatically void.

Voters must return their mail ballots so that they will be received in the National Labor Relations Board, Region 05 office on **Wednesday, July 1, 2020 by 3:00 p.m.**

Those employees who believe that they are eligible to vote and did not receive a ballot in the mail by **Friday, June 19, 2020** should communicate immediately with the National Labor Relations Board by either calling the Region 05 Office at (410) 962-2822 or our national toll free line at 1-844-762-NLRB (1-844-762-6572).

Due to the extraordinary circumstances of COVID-19 and the directions of state or local authorities included but not limited to stay-at-home, travel restrictions, social distancing and limits on the size of gatherings of individuals, I further direct that the ballot count will take place virtually, on a videoconference platform (such as WebEx, Skype, etc.) to be determined by the Regional Director, at 3:00 p.m. on **Thursday, July 2, 2020**. Each party will be allowed to have one observer attend the virtual ballot count.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending May 30, 2020, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names, work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by June 10, 2020. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlr.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlr.gov. Once the

website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlr.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must

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serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Issued at Baltimore, Maryland this 8th day of June 2020.

(SEAL)

/s/ *Sean R. Marshall*

Sean R. Marshall, Regional Director
National Labor Relations Board, Region 05
Bank of America Center, Tower II
100 S. Charles Street, Ste. 600
Baltimore, MD 21201